

ORDERED in the Southern District of Florida on 10-10-06



Raymond B. Ray

Raymond B. Ray, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

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Broward Division

In re:

Case No. 04-22794-BKC-RBR

JULIO C. DANIEL and
MARLEN DANIEL

Chapter 7

Debtors.

JULIO C. DANIEL and,
MARLEN DANIEL
Plaintiffs,

v.

Adv. No. 06-1864-BKC-RBR-A

PFIZER CORPORATION OR ITS SUCCESSOR
IN INTEREST, AIG INSURANCE AMERICAN
INTERNATIONAL MARINE AGENCY and
UNITED STATES OF AMERICA,

Defendants.

ORDER DISMISSING ADVERSARY PROCEEDING

THIS MATTER came before the Court for pretrial conference on October 10, 2006, on the motion of the United States of America to dismiss the adversary proceeding. By way of background this adversary proceeding was filed by the pro se debtors to determine the dischargeability of a criminal restitution order entered into as part of a federal criminal sentencing order. *See United States v. Daniel and Daniel*, Case No. 01-6168-CR-Gonzalez (S.D.Fla.)(docket entries 153 and 154). The Debtors were each convicted of: one count of conspiracy to defraud the United States

under 18 U.S.C. §371; two counts of receiving and possession of stolen goods under 18 U.S.C. §659; and one count of unlawful wholesale distribution of prescription drugs under 21 U.S.C. 353(e). See C.P. 1 (exhibit A and B). Pursuant to the sentencing order the Debtors were required to pay \$4,682,400 in restitution to Pfizer Corporation. See *id.*

The Supreme Court has stated that “as long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute.” *United States v. Ron Pair Enter.*, 489 U.S. 235, 240-41(1989). Under 11 U.S.C. §523(a)(13) “any debt for any payment of an order of restitution issued under title 18, United States Code” is exempted from discharge. Therefore, to the extent that any or all of the \$4,682,400 is restitution under title 18 the debt cannot be discharged.

In this case the entire restitution amount is a result the convictions under title 18. The sentencing order states that the payments are subject to and must conform with 18 U.S.C. §3664(i). See C.P. 1 (Exhibit A and B, section titled “Criminal Monetary Penalties”)(stating “[h]owever, pursuant to 18 U.S.C. §3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.”). By its terms 18 U.S.C. §3664 applies only to restitution ordered under title 18. See 18 U.S.C. §3664(a)(“[f]or orders of restitution under this title...”). Since, the entire \$4,682,400 is subject to 18 U.S.C. §3664(i), *a fortiori* the full amount was ordered under title 18. Consequently, the entire debt falls within the scope of 11 U.S.C. §523(a)(13) and is exempted from discharge.

Therefore, it is

ORDERED that:

1. The Defendant’s motion to dismiss is granted.
 2. The adversary complaint is dismissed.
 3. The restitution debt is deemed to be exempt from discharge under 11 U.S.C. §523(a)(13)
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The Clerk of the Court shall serve copies to:

Julio C. Daniel

Marlen Daniel

Grisel Alonso, AUSA